



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Acting Commissioner

FINAL DECISION

February 23, 2010 Government Records Council Meeting

Willie Williams
Complainant

Complaint No. 2009-78

v.

New Jersey Department of Corrections
Custodian of Record

At the February 23, 2010 public meeting, the Government Records Council (“Council”) considered the February 16, 2010 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian unlawfully denied access to the records responsive to item no. 1 of the Complainant’s OPRA request dated 1977-1990 because the Custodian inadvertently failed to include the correct date parameters into the OPRA tracking system. However, the Custodian realized said error after the filing of this Denial of Access Complaint and made said records available to the Complainant on March 10, 2009.
2. Because item nos. 2-3 of the Complainant’s OPRA request do not identify with reasonable clarity the records sought, and because the Custodian is not required to conduct an open-ended search of the agency’s files, said request items are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Further, the Custodian certified that after receiving additional information regarding said request items in the Complainant’s Denial of Access Complaint, the Custodian determined that there are no records responsive to said request items.



This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 23rd Day of February, 2010

Robin Berg Tabakin, Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Harlynn A. Lack, Secretary
Government Records Council

Decision Distribution Date: March 2, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 23, 2010 Council Meeting**

**Willie Williams¹
Complainant**

GRC Complaint No. 2009-78

v.

**New Jersey Department of Corrections²
Custodian of Records**

Records Relevant to Complaint:

1. Inmate Management Progress Report Notes for Willie Williams 59025/438601A dated January 1977 to present.
2. Documents relating to the Parole Eligibility Monitoring System (PEMS).
3. Documents relating to the Parole Eligibility Monitoring System (PEMS), Sentence Verification Project Monitored Reviews.

Request Made: January 30, 2009

Response Made: February 3, 2009 and March 10, 2009

Custodian: Michelle Hammel

GRC Complaint Filed: March 5, 2009³

Background

January 30, 2009

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

February 3, 2009

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the first (1st) business day following receipt of such request.⁴ The Custodian states that the Complainant will be notified by the OPRA Liaison of Southern State Correctional Facility regarding the copy fee incurred for the records responsive to item no. 1 of the Complainant's OPRA request. The Custodian states that said records will be released upon the Complainant's payment of the copy fee.

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The GRC received the Denial of Access Complaint on said date.

⁴ The Custodian certified in her Statement of Information that she received the Complainant's OPRA request on February 2, 2009.

Additionally, the Custodian states that item nos. 2-3 of the Complainant's OPRA request are unclear, overly broad and do not adequately identify the records sought. The Custodian states that OPRA only requires a response to a request for specific records, not for information and it does not require the creation of any documents in order to respond to a request. The Custodian also states that pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), a request is invalid when it requires a custodian to conduct research and correlate data. Additionally, the Custodian states that if the Complainant wishes to clarify his request, he may provide a specific description of the requested records to the Custodian.

March 5, 2009

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachments:

- Complainant's OPRA request dated January 30, 2009.
- Custodian's response to the Complainant's OPRA request dated February 3, 2009.

The Complainant states that he submitted his OPRA request on or about February 3, 2009. The Complainant states that item no. 1 of his OPRA request sought access to Inmate Management Progress Report Notes for Willie Williams 59025/438601A dated January 1977 to present; however, the Complainant only received records dated from March 7, 1990 to present.

Additionally, the Complainant states that the Custodian denied item nos. 2-3 of his OPRA request even though the Complainant believes he specifically identified the records sought.

March 10, 2009

Letter from Custodian to Complainant. The Custodian states that she is in receipt of the Complainant's Denial of Access Complaint. The Custodian states that an inadvertent error was made when entering the Complainant's OPRA request item no. 1 into the Department's OPRA tracking system and the time period of January 1977 to present was omitted. As such, the Custodian states that the OPRA Liaison at Southern State Correctional Facility only retrieved the records that are currently available on the Inmate Management System. The Custodian states that she has obtained the additional progress notes from 1977-1990. The Custodian requests that the Complainant submit payment of \$7.25 for said records. The Custodian states that said records will be provided once payment is received.

March 12, 2009

Letter of Representation from Custodian's Counsel.

March 18, 2009

Offer of Mediation sent to both parties.

March 20, 2009

The Custodian declines mediation.

March 23, 2009

Complainant's signed Agreement to Mediate.

March 30, 2009

Request for the Statement of Information ("SOI") sent to the Custodian.

April 3, 2009

E-mail from GRC to Custodian's Counsel. The GRC grants a five (5) business day extension of time for Counsel to submit the Custodian's completed SOI.⁵

April 14, 2009

E-mail from GRC to Custodian's Counsel. The GRC grants an extension of time until the close of business on April 20, 2009 for Counsel to submit the Custodian's completed SOI.⁶

April 20, 2009

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated January 30, 2009.
- Custodian's response to the Complainant's OPRA request dated February 3, 2009.
- Letter from Custodian to Complainant dated March 10, 2009.
- Custodian Counsel's Letter Brief dated April 20, 2009.⁷

The Custodian certifies that she received the Complainant's OPRA request on or about February 2, 2009. The Custodian certifies that upon receipt of the Complainant's OPRA request, she forwarded said request to the OPRA Liaison at Southern State Correctional Facility where the Complainant was in custody. The Custodian certifies that regarding item no. 1 of the Complainant's OPRA request, an inadvertent error was made when the information was entered into the OPRA tracking system. The Custodian certifies that the reference to records dated January 1977 to present was omitted and the OPRA Liaison only retrieved the records currently available on the Inmate Management System which became computerized in 1990. The Custodian certifies that she realized said error once the Complainant filed this Denial of Access Complaint and informed the Complainant on March 10, 2009 that the remaining records were being retrieved. The Custodian states that the Complainant has paid for and received said records.

Regarding items no. 2-3 of the Complainant's OPRA request, the Custodian certifies that she provided a written response to the Complainant's OPRA request on February 3, 2009 indicating that said requests were invalid because they do not adequately identify the records sought. The Custodian certifies that when the Complainant filed this Denial of Access Complaint, he provided additional information regarding said requests, specifically that the PEMS program was initiated in 1983 by the New Jersey State Parole Board. The Custodian certifies that after receiving this subsequent information, she searched the Department's records and determined that no

⁵ In response to Counsel's verbal request on said date.

⁶ In response to Counsel's verbal request on said date.

⁷ The Custodian attached additional records; however, said records are not relevant to the adjudication of this Denial of Access Complaint.

records responsive to items no. 2-3 exist. The Custodian certifies that the Department and Parole Board no longer utilize PEMS to monitor parole eligibility dates.

The Custodian also certifies that records that may have been responsive to the request are to be maintained on file for ten (10) years in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

April 20, 2009⁸

Custodian Counsel's Letter Brief. Counsel restates the facts presented in the Custodian's SOI regarding the Custodian's receipt and response to the Complainant's OPRA request.

Counsel contends that OPRA only requires a response to a request for specific records, not for information. Counsel states that pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), OPRA does not require a custodian to conduct research and correlate data from various records. Additionally, Counsel states that agencies are only required to disclose "identifiable" government records pursuant to MAG. Counsel also states that the court in MAG held that, "OPRA is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying or examination.'" Counsel contends that pursuant to MAG, *supra*, the Custodian properly denied items no. 2-3 of the Complainant's OPRA request because said items failed to identify specific government records.

Counsel also restates the facts presented in the Custodian's SOI regarding the Custodian's further search for records responsive to items no 2-3 after receiving additional information regarding said requests in the Complainant's Denial of Access Complaint.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

"...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*" (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

"... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or

⁸ Additional correspondence was submitted by the parties. However, said correspondence is either not relevant to this complaint or restates the facts/assertions already presented to the GRC.

in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

Item No. 1 of the Complainant’s OPRA Request

The Custodian certified that she received the Complainant’s OPRA request on or about February 2, 2009. The Custodian also certified that she provided the Complainant with a written response on the next business day, February 3, 2009, in which the Custodian informed the Complainant that the OPRA Liaison of Southern State Correctional Facility would notify the Complainant regarding the copy fee for the records responsive to item no. 1 of his request.

In the Complainant’s Denial of Access Complaint, the Complainant stated that he received records dated 1990 to the present time rather than 1977 to the present time as requested. The Custodian certified that an inadvertent error was made when the information was entered into the OPRA tracking system. The Custodian certified that the reference to records dated January 1977 to present was omitted and the OPRA Liaison only retrieved the records currently available on the Inmate Management System which became computerized in 1990. The Custodian certified that she realized said error once the Complainant filed this Denial of Access Complaint and informed the Complainant on March 10, 2009 that the remaining records were being retrieved. The Custodian stated that the Complainant has paid for and received said records.

Therefore, the Custodian unlawfully denied access to the records responsive to item no. 1 of the Complainant’s OPRA request dated 1977-1990 because the Custodian inadvertently failed to include the correct date parameters into the OPRA tracking system. However, the Custodian realized said error after the filing of this Denial of Access Complaint and made said records available to the Complainant on March 10, 2009.

Item Nos. 2-3 of the Complainant’s OPRA Request

The Custodian certified that she denied said item nos. 2-3 of the Complainant’s OPRA request in a letter dated February 3, 2009 pursuant to MAG Entertainment, LLC v.

Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005) because the Complainant failed to identify any specific government records.

Both the New Jersey courts and the Council have provided guidance regarding the level of specificity required when making a records request under OPRA. Specifically, the New Jersey Superior Court has held that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.'*" N.J.S.A. 47:1A-1." (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005). The Court further held that "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files." (Emphasis added.) *Id.* at 549.

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),⁹ the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents."¹⁰

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court cited MAG by stating that "...when a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA..."

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) the Council held that "[b]ecause the Complainant's OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005)."

In this instant complaint, item nos. 2-3 of the Complainant's OPRA request seek "documents" relating to PEMS without any further clarification regarding what type of documents are requested such as memorandums, reports, e-mails, manuals, etc. Without any additional information to clarify said request items, the Custodian was not obligated to conduct an open-ended search for any document relating to PEMS.

Therefore, because item nos. 2-3 of the Complainant's OPRA request do not identify with reasonable clarity the records sought, and because the Custodian is not required to conduct an open-ended search of the agency's files, said request items are

⁹ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

¹⁰ As stated in Bent, *supra*.

invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG, *supra*, Bent, *supra*, NJ Builders, *supra*, and Schuler, *supra*. Further, the Custodian certified that after receiving additional information regarding said request items in the Complainant's Denial of Access Complaint, the Custodian determined that there are no records responsive to said request items.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian unlawfully denied access to the records responsive to item no. 1 of the Complainant's OPRA request dated 1977-1990 because the Custodian inadvertently failed to include the correct date parameters into the OPRA tracking system. However, the Custodian realized said error after the filing of this Denial of Access Complaint and made said records available to the Complainant on March 10, 2009.
2. Because item nos. 2-3 of the Complainant's OPRA request do not identify with reasonable clarity the records sought, and because the Custodian is not required to conduct an open-ended search of the agency's files, said request items are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Further, the Custodian certified that after receiving additional information regarding said request items in the Complainant's Denial of Access Complaint, the Custodian determined that there are no records responsive to said request items.

Prepared By: Dara Lownie
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

February 16, 2010